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REMARKS/ARGUMENTS

Claims 1-3, 5, 9, 10, and 12-18 are pending in this application. By this Amendment, Applicant AMENDS claim 16 and ADDS claims 17 and 18.

The Examiner has indicated that the outstanding Office Action is a Final Office Action (in the first full paragraph on page 5 of the outstanding Office Action). The Examiner is reminded that "[b]efore [a] final rejection is in order[,] a **clear issue** should be developed between the examiner and applicant." MPEP § 706.07 (emphasis added).

First, it is the Applicant's understanding that the Examiner is required to quote the relevant portions of the statute to clearly reject a claim. The Examiner is pointed to MPEP § 706.02(m) and Examiner's Note to Form Paragraph 7.20 where it states the quotation of 35 U.S.C. §103(a) "is only **required** in first actions on the merits employing 35 U.S.C. 103(a) and final rejections" (emphasis added). Because the Examiner has failed to quote 35 U.S.C. §103(a) in the rejection of claims 1-3, 9, 10, 12, and 16, the Examiner has failed to establish a clear issue.

Please note, as discussed below, claim 11 was canceled in the Amendment dated October 2, 2002.

Accordingly, Applicant respectfully requests reconsideration and withdrawal of the Finality of the outstanding Office Action.

The Examiner objected to claim 16 for allegedly containing a minor informality. Applicant has amended claim 16 to correct the minor informality noted by the Examiner. Accordingly, Applicant respectfully requests reconsideration and withdrawal of the objection of the claim.

Claim 16 was rejected under 35 U.S.C. §112, second paragraph as allegedly being Indefinite. Claim 16 has been amended to correct the informality noted by the Examiner. Accordingly, Applicant respectfully requests reconsideration and withdrawal of the rejection of claim 16 under 35 U.S.C. §112, second paragraph.

Claims 1-3, 9, 10, 12 and 16 were rejected under 35 U.S.C. § 103(a) as being

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unpatentable over Applicant's Admitted Prior Art (AAPA) in view of Cleeves (U.S. 6,004,874). It is noted that the Examiner has indicated that claim 11 was rejected. However, claim 11 was canceled in the Amendment dated October 2, 2002. Applicant respectfully traverses the rejection of claims 1-3, 9, 10, 12 and 16.

Applicant's claims 1, 2 and 16 recite the feature of "removing the etching stop layer." Applicant agrees with the Examiner that AAPA teaches this feature. The Examiner has relied upon Cleeves to teach the feature of "etch stop layer can be made by either insulating material silicon dioxide, or by conductive material titanium" (see paragraph bridging pages 3-4 of the outstanding Action dated May 8, 2002).

However, the Examiner has failed to provide any evidence that the etching stop layer made of titanium can be removed. The etching stop layer **214** of Cleeves is clearly never removed. The Examiner has admitted in the last paragraph on page 4 of the outstanding Office Action that Cleeves clearly teaches that the etching stop layer **214** is used as an interconnect layer in the resulting semiconductor device. Thus, the etching stop layer **214** of Cleeves cannot be removed from the resulting semiconductor device. To do so would destroy the operability of the device of Cleeves.

Thus, Cleeves clearly teaches away from the present claimed invention, because the etching stop layer **214** of Cleeves cannot be removed. Accordingly, Cleeves cannot be relied upon in an obviousness rejection of Applicant's claimed invention since it is error to find obviousness where references diverge and teach away from the invention at hand. W.L. Gore & Assoc. v. Garlock Inc., 721 F.2d 1540, 1550, 220 USPQ 303, 311 (Fed. Cir. 1983).

Instead of basing the conclusion of obviousness on actual teachings or suggestions of the prior art and the knowledge of one of ordinary skill in the art at the time the invention was made, the Examiner has improperly used Applicants' own invention as a guide. It is impermissible to use the claimed invention as an instruction manual or 'template' to piece together the teachings of the prior art so that the claimed invention is rendered obvious. The Patent Office cannot use hindsight reconstruction to

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pick and choose among isolated disclosures in the prior art to deprecate the claimed invention. In re Fritch, 23 USPQ 2d 1780 (Fed. Cir. 1992).

The Examiner is hereby requested to cite a reference in support of her position that it was well known at the time of Applicants' invention that metal etching stop layers can be removed. If the rejection is based on facts within the personal knowledge of the Examiner, the data should be supported as specifically as possible and the rejection must be supported by an affidavit from the Examiner, which would be subject to contradiction or explanation by affidavit of Applicants or other persons. See 37 C.F.R. § 1.104(d)(2).

Accordingly, Applicant respectfully requests reconsideration and withdrawal of the rejection of claims 1, 2 and 16 under 35 U.S.C. §103(a) as being unpatentable over AAPA in view of Cleeves.

Accordingly, Applicant respectfully submits that AAPA and Cleeves, applied alone or in combination, fail to teach or suggest the unique combination and arrangement of elements recited in claims 1, 2 and 16 of the present application. Claims 3, 5, 9, 10, 12-5, 17 and 18 depend upon claims 1, 2 and 16, and are therefore allowable for at least the reasons that claims 1, 2 and 16 are allowable.

In view of the foregoing amendments and remarks, Applicant respectfully submits that this application is in condition for allowance. Favorable consideration and prompt allowance are solicited.

To the extent necessary, Applicant petitions the Commissioner for a THREE-month extension of time, extending to June 30, 2003, the period for response to the Office Action dated December 31, 2002.

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The Commissioner is authorized to charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account No. 50-1353.

Respectfully submitted,

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